RECENT CASES

ATTORNEY AND CLIENT—COMPENSATION OF ATTORNEY—PROTECTION AGAINST COLLUSIVE SETTLEMENT.—BURKHART v. SCOTT, 72 S. E., 784 (W. VA.).—*Held*, that an attorney who has brought a suit, pursuant to an agreement that he is to have a certain *per centum* of the judgment that shall be recovered, as his fee for services, has an inchoate right in the chose in action, and may avoid a collusive settlement, made between the defendant and his client, for the purpose of defeating his fee.

An attorney who brings an action under a contract for a contingent fee, and by which his client agrees not to compromise, cannot question a *bona fide* settlement before judgment. *DeGraffenreid v. St. Louis S. W. R. Co.*, 66 Ark., 260. An agreement not to compromise is violative of public policy. *Ellwood v. Wilson*, 21 Ia., 523. An attorney has no lien for services before judgment or decree. *Jones on Liens*, §193; *Jackson v. Stearns*, 48 Ore., 24; *Hutchinson v. Pettes*, 18 Vt., 614; *Voight Brewery Co. v. Donovan*, 103 Mich., 190. Though the case of *Johnson v. McCurry*, 102 Ga., 471, holds to the contrary. Yet it has been the practice at common law for the courts to intervene to protect attorneys against settlements made by their clients to deprive them of their costs or fees. *Potter v. Ajax Min. Co.*, 19 Utah, 421. If, therefore, a suit is settled collusively, and with an intent to defeat the attorney's claim, the court will set aside, or refuse to enforce, the settlement. *Young v. Dearborn*, 27 N. H., 324; *Fischer-Hansen v. Brooklyn Heights R. Co.*, 71 N. Y. Supp., 513; *Jones on Liens*, §203.

CHARITIES—ADMINISTRATION—TORTS OF.—KELLOGG v. CHURCH CHARITY FOUNDATION OF LONG ISLAND, 96 N. E., 406 (N. Y.).—*Held*, that a charitable corporation cannot escape liability for a tort against a stranger, because it holds its property in trust to be applied for purposes of charity.

The weight of authority favors the doctrine that charitable corporations are not liable for the torts of their agents. *Benton v. Hospital*, 140 Mass., 13; *Hearns v. Waterbury Hospital*, 66 Conn., 98. Though such exemption from liability is limited to the cases of those who are beneficiaries under the trust fund, and does not extend to strangers. *Bruce v. Central M. E. Church*, 147 Mich., 230; *Mulchey v. Methodist Society*, 125 Mass., 487. Yet it extends to cases where the beneficiary pays a pecuniary consideration. *Abston v. Waldon Acad.*, 118 Tenn., 24. In most states the ground for this non-liability is that to pay damages for such torts would be a diversion of the funds from the trust purposes. *Williamson v. Industrial School*, 95 Ky., 251. This rule would apply equally as well to strangers, and for this reason in *Powers v. Mass. Hospital*, 109 Fed., 294, the exemption was made to rest upon an implied agreement arising from acceptance by the patient. In *Fordyce v. Women's Association*, 79 Ark., 532, a recovery was denied, even to a stranger, on the ground that property of a charity cannot be sold under execution issued on a judgment. And

yet in *Glavin v. R. I. Hospital,* 12 R. I., 411, the charity was held liable on the ground of public policy, even though the plaintiff was a beneficiary of the trust fund.

CRIMINAL LAW—EVIDENCE—WITNESS WITHOUT JURISDICTION.—STATE V. CONKLIN, 133 N. W., 119 (IA.).—*Held,* that where a witness who had testified at a previous trial was beyond the jurisdiction, and his testimony had not been taken down in short hand, it was permissible for one who heard to give the substance thereof against the accused. Weaver and Evans, J. J., *dissenting.*

That the witness is not a resident of the state, or is absent therefrom at the time of the trial has been held sufficient ground for the admission of his testimony as taken at the preliminary examination. *Perry v. State,* 87 Ala., 30; *Cowell v. State,* 16 Texas App., 58. Some courts refuse to recognize this as a sufficient reason. *Finn v. Com.,* 5 Rand (Va.), 701, unless his absence was procured by the opposite party. *State v. Houser,* 26 Mo., 431. Yet even when the only means of proving such testimony is by the oral testimony of those who heard it at the examination, and they are able to repeat it in substance, such a method, according to the majority opinion, is permissible. *State v. Harmon,* 70 Kan., 476; *Baker v. Sands,* 140 S. W. (Texas), 520. But in *United States v. Wood,* Fed. Cas. No. 16, 756, it was held that the witness must repeat the testimony of even a deceased witness exactly as it was given, and not merely in substance. And in *Wade v. State,* 7 Baxt. (Tenn.), 80, the witness was required to repeat it in such detail as the Court should demand.

EVIDENCE—DOCUMENTARY—TIME BOOKS.—BOCKELCAMP V. LACKAWANNA & W. V. R. CO., 81 ATL., 93 (PA.).—*Held,* a time book, not a book of original entries, of an employer is inadmissible to show the hours that an employee worked on a particular day where the book was made from time slips which were not produced, and where the witnesses who made the entries were not produced.

The established rule is that a book which is not a book of original entries is not admissible. *Rumsey v. Tel. Co.,* 49 N. J. L., 322; *Woolsey v. Boher,* 41 Minn., 235; *Bently v. Ward,* 116 Mass., 333; *Way v. Cross,* 95 Ia., 258. While a book of original entries fair and regular on its face will, provided it is properly authenticated, generally be admissible in evidence. *Folsom v. Grant,* 136 Mass., 493; *Anchor Milling Co. v. Walsh,* 108 Mo., 277; *Lunsford v. Butler,* 102 Ala., 403. Whether a book is one of original entries is something difficult to decide; the fact, however, that temporary memoranda were originally made, and the entries then made from them in the books, does not make them inadmissible; they are still books of original entries. *Faxon v. Hollis,* 13 Mass., 427; *McGoldrick v. Teaphagen,* 88 N. Y., 334; *Hall v. Glidden,* 39 Me., 445. For their admission in evidence proper authentification by the party making the entries is essential; or in case of his death or other disability, by proof of his handwriting. *Miller v. Shay,* 145 Mass., 162; *Stroud v. Tilton,* 4 App. Dec. (N. Y.), 324. It must be shown that the entries were made in the regular